

## DEPARTMENT OF STATE REVENUE

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### LETTER OF FINDINGS NUMBER: 97-05390 ST Claim For Refund-Sales And Use Tax For The Period: 1994 through 1996

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

### ISSUES

#### **I. Gross Retail/Use Tax -- Body Shop Materials**

**Authority:** IC 6-2.5-2-1; 45 IAC 2.2-4-2(a); Sales Tax Information Bulletin #28 (December 1992)

#### **STATEMENT OF FACTS**

Taxpayer is an Indiana Corporation focused on operating a new and used car lot. The taxpayer has a background in the body and repair shop business, and also has a body and repair shop operation within the same establishment. According to the auditor, the assessed supplies used in the body shop are purchased mainly from two suppliers and no sales tax is paid. Taxpayer protests the proposed assessment of use tax on the supplies at the body shop. Those supplies are used on the customer's body shop work and separately itemized on the body shop repair invoicing under "paint and materials" as taxable items. Taxpayer collects sales taxes on the amount categorized as materials. At the same time, those supplies are never incorporated into the customer's vehicle. The taxpayer contends that if the Department wants to collect sales/use taxes as the assessment states, then the customers would be charged sales tax on the same supplies twice.

#### **I. Gross Retail/Use Tax -- Body Shop Materials**

#### **DISCUSSION**

The gross retail/use tax liability for materials consumed by a service provider cannot be transferred to the customer. As the service provider, taxpayer is the ultimate consumer of materials. The purchaser becomes the final user of such items because its customer does not become the owner of such consumable supplies. Although the dealer may charge the customer for such items, the items are not being sold to the customer in a retail transaction. The initial purchases of the materials by the taxpayer are retail transactions subject to the gross retail tax. Sales Tax Information Bulletin #28 and IC 6-2.5-2-1.

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"...Services in respect to property not owned by the person rendering such services are not 'transactions of a retail merchant constituting selling at retail', and are not subject to gross retail tax." 45 IAC 2.2-4-2(a). Audit assessed gross retail/use tax on body shop supplies on which no gross retail tax was paid by taxpayer upon purchase. Taxpayer argues that customers were charged gross retail tax and taxpayer should get a credit for those taxes customers paid.

The sales taxes were collected under the "Paint and Materials" heading. The credit taxpayer seeks is for taxes supposedly charged erroneously to customers with respect to that heading which consists of such supplies as masking tape, buff pads, discs, and others. This was taxpayer's third audit and no attempt was made to self-assess use tax. The taxpayer's background is in the body shop repair business, and is knowledgeable about its accounting. It would be inequitable to grant taxpayer a credit.

### **FINDING**

Taxpayer's protest is respectfully denied.